

United States of America v. David Fowler

ATTACHMENT A - AFFIDAVIT

I, Armida Maria Macmanus, am a Special Agent with the Federal Bureau of Investigation (FBI) and have been employed as such for almost 18 years. In my career, I have investigated or participated in investigations involving a variety of federal statutes, including drug trafficking offenses, kidnappings, and public corruption, including allegations of color of law violations and obstruction of justice. I have also conducted violent crimes investigations including those involving threatening communications.

Relevant Statutes

Title 18 U.S.C. § 875(c) Threatening Communications states, “Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.”

Details of the Investigation

On October 26, 2023, the FBI received information from Andrew Sanchez, Investigator, 3rd Judicial District Attorney’s Office for the District of New Mexico, that a threatening voicemail message had been discovered by an employee of the District Attorney’s Office (herein Victim) in Dona Ana County, New Mexico, on that day.

I reviewed an email from Sanchez which contained an attachment, which was a recording. I also observed text content within the email that read, in part, “From: Mitel Voice Mail <do not reply@mitelcloud.com> Date: October 26, 2023, at 10:51:59 MDT, To: Victim Victim@da.state.nm.us Subject: Mitel voice message from Caller Out of Area for mailbox...”

I listened to the recording and heard the following statements:

Caller: “Hey, you stupid nigger. I guess, ugh, cops just give you extra blow jobs when they shoot people in the back...that’s why you don’t charge them...for that blue line gang? You’re a filthy corrupt fucking nigger. I hope you and your family get what’s coming to you. And for that cop, holy shit...how is she trespassing? She has to be asked to leave. And what’s with that fucking officer, fucking swearing at her every fucking five fucking seconds? You mother fucker. You’re not going to hold your officers accountable? Cause if they give you a good blow job? I guess we are going to have to. And then you can be on tv crying and whining I can’t believe this happened why would people treat us this way...because you don’t hold yourselves accountable you fucking dumb nigger. There should be a noose in your future.”

I learned that the District Attorney’s office has one employee, the Victim, who is African American. This observation coincides with the context in which the threat was made, which was the use by the caller numerous times of a racial slur and a reference to a “noose” being in the Victim’s future.

I also learned from Sanchez that Mitel, the company who services the DAs office phone system, manages calls into the DAs office in two ways. First, a caller may speak to an operator that will transfer the call to the specified recipient or Mitel's automated system feature will provide the caller an opportunity to search the recipient's name in the directory or enter an extension/mailbox number.

I read several reports pertaining to this case that were authored by FBI Special Agent Sean Macmanus, who is assigned to the FBI's Cellular Analysis Survey Team (CAST). I learned from the reports that a blocked phone number was listed in the Mitel records as having called the Victim at approximately 10:51 a.m. on October 26, 2023. After contacting Verizon, a cellular service provider, and requesting voluntary records from Verizon due to an exigent circumstance, SA Sean Macmanus reviewed the records and determined that cellular phone number (330) 421-7069 called the DA's office at approximately 10:49 a.m. on October 26, 2023. The call lasted approximately two minutes. This amount of time is consistent with the length of the recording and the time it would take someone to call and connect to the Victim's voicemail. Additionally, Verizon records revealed the user of the suspect phone number dialed *67, which is a feature used to block a phone number while making a call. SA Sean Macmanus also determined that Donald Fowler was listed as the subscriber of the suspect cell phone. Verizon records also listed an address for Fowler in Lodi, Ohio. SA Sean Macmanus learned that the suspect cell phone used a cell phone tower located in Ohio at the time the threat was made.

I reviewed a criminal history check for Fowler, which revealed an arrest in 1999 for domestic violence and two drinking under the influence charges in Ohio.

I spoke with Jon Day, Major, Dona Ana Sheriff's Office (DASO), regarding the threat made to the Victim. Day informed me that DASO deputies would conduct continuous patrols in the neighborhood where the Victim and his family reside. I also learned from Day that the New Mexico State Police (NMSP), the United States Marshal Service (USMS) and the Las Cruces Police Department (LCPD) were notified of the threat to the Victim and that patrol officers from these agencies would assist in conducting additional patrols in support of the investigation.

On November 8, 2023, FBI Supervisory SA Rick Perkins met with the Victim and learned the following: Due to the threat made against the Victim and his family, the Victim has experienced both psychological and physiological changes. After he learned of the threat, the Victim experienced anxiety similar to what a member of the military experiences when deployed, where every potential personal encounter is a threat. The Victim characterized the threat as overt and directed towards him and his family. Particularly, the use of the "n-word" and "a noose in your future," was a racial animus directed at the Victim and his family with the purpose of creating fear and intimidation.

On November 16, 2023, FBI Agents in Ohio approached Donald Fowler and conducted an interview. Fowler initially denied leaving a threatening voicemail in New Mexico to anyone. However, when asked if he knew anything about leaving a message at the DA's office in New Mexico, Fowler responded, "Not at the DA's office." When asked if he left a message for somebody in New Mexico, Fowler said, "Maybe somebody in New Mexico." Agents asked

Fowler why he left a message in New Mexico, Fowler said probably because of the crime the cops committed. When asked to be more specific and Fowler said he wouldn't remember what it was.

Fowler said there are videos (presumably of corruption and police misconduct) all over the place and that there is no problem redressing the government. Fowler said that that they (presumably the government) are coming after people and the government is saying they don't "do nothing," and the people can't redress the government and "you can't do nothing without being pinned against the wall for it."

Fowler appeared frustrated about the situation within government. As Agents told Fowler that a person can't threaten someone, Fowler asked, "Just to say, 'I hope bad shit happens to you?'" Agents explained to Fowler that he probably would not like it if someone threatened his family, to which he said, "They're in a public office." Based on my review of the recorded interview, I believe Fowler knew that the Victim is an elected public official, and Fowler was justified in his actions due to the Victim holding a public position.

Agents asked why a particular case in New Mexico upset him, and Fowler responded, "Because you turn the news on every fucking day, and you see this shit happened and nobody does a damn thing about it. So now, [you] redress your government and now you get in trouble for redressing your government. Maybe it's not nice to say, 'I hope something bad happens to you and your family' Where the hell's the compassion or anything where where's anything going that they do anything against the cops and the brutality and just the ugh, whole bullshit over it."

Fowler said he didn't know which video it was that pertained to this investigation and then questioned why the government always says to "let it play out" and "let it go through the system." Fowler began talking about another separate incident where a video showed five cops beating someone to death while handcuffed and then being let out on bail. Fowler then said, "Wait for it to play out . . . it's on camera . . . beat a guy in handcuffs to death . . . let it play out . . . No, we are investigating ourselves . . . we will take care of it."

Fowler continued to discuss other cases of police brutality and felt that overall, everyone covers up for one another. Fowler did not agree with the sentiment to give something time and let something "play out" and if one goes into public office they will be scrutinized.

Fowler did not provide his cell phone number to Agents. Fowler said he had not left the state of Ohio since 2015 and told Agents they could be reassured he was not going to travel to New Mexico and harm anyone. Fowler said, "When something bad happens to somebody else when they do nothing to stop anything I don't understand why that's bad to say, 'an eye for an eye'" Fowler then said, "I understand what you are saying, I'm just...every time it just ramps me up and just pisses me off and there is no accountability whatsoever."

I compared the voice captured in the threatening message left for the Victim on October 26, 2023, to Donald Fowler's voice captured on the recorded interview conducted by FBI Agents in Ohio on November 16, 2023. I believe the voices on both recordings are from Donald Fowler.

Based on my training and experience, I believe Donald Fowler sent a threatening message on October 26, 2023, from Ohio, that was received by the Victim the same day in New Mexico. Fowler used his cellular phone, an instrument of interstate commerce, to send the message. I believe the recorded message contained a true threat to injure the Victim. The Victim told the FBI he felt the threat was real and the threat was directed at the Victim.

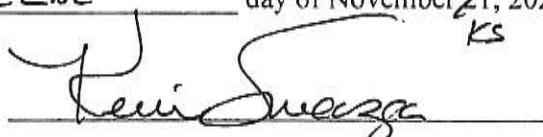
Based on the information described above, there is probable cause that David Fowler committed a violation of 18 U.S.C. § 875(c) Threatening Communications.

This complaint was reviewed and approved by AUSA Marisa A. Ong



Armida Macmanus
Special Agent
Federal Bureau of Investigations

Subscribed and sworn before me this 22nd day of November 21, 2023.



Luis Saez

United States Magistrate Judge